

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

JOHN LENNEX,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 06-877
)	Judge Joy Flowers Conti
WAL-MART STORES EAST, LP)	Magistrate Judge Lisa Pupo Lenihan
)	
Defendant.)	

MEMORANDUM ORDER

Plaintiff's Complaint was received by the Clerk of Court and was subsequently referred to United States Magistrate Judge Lisa Lenihan for pretrial proceedings in accordance with the Magistrate Judges Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrate Judges.

This case involves claims related to the alleged failure of defendant Wal-Mart Stores East, LP ("Defendant") to accommodate, and discriminatory and/or retaliatory treatment and termination of plaintiff, John Lennex ("Lennex"), in response to Lennex's request for accommodation of disability resulting from his coronary condition, in violation of Americans with Disabilities Act, 42 U.S.C. 12112 *et seq.* (the "ADA") and the Pennsylvania Human Relations Act, 43 Pa. Cons. Stat. Ann. § 955(a) *et seq.* (the "PHRA"). The Magistrate Judge's February 29, 2008 Report and Recommendation recommended that Defendant's Motion for Summary Judgment be denied. Objections were timely filed by Defendant. The objections in essence repeat arguments raised before the magistrate judge and addressed in the Report and

Recommendation. It is noteworthy that, contrary to the reference in the objections, the Report and Recommendation did not resolve issues of disputed facts. The Report and Recommendation found sufficient evidence of record existed to raise the issues of disputed fact which will be resolved by a jury. Specifically, the jury will resolve the genuine issues of fact related to whether Lennox is disabled or was regarded as disabled within the meaning of ADA and whether Defendant failed to meet its duty to engage in the interactive process in good faith and provide reasonable accommodations.

After review of the pleadings and submissions of the parties, together with the Report and Recommendation and the objections of Defendant, the following Order is entered:

AND NOW, this 19th day of March, 2008:

IT IS HEREBY ORDERED that Defendant's Motion for Summary Judgment be denied.

The Report and Recommendation of Magistrate Judge Lenihan is adopted as the Opinion of the Court.

/s/ Joy Flowers Conti
Honorable Joy Flowers Conti
United States District Judge